IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

S.B. CIVIL REGULAR FIRST APPEAL NO.107/1987
(Shispal Vs. Chhelu Ram & Others)

Date of Judgment : July 20th, 2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. S.G. Ojha with
Mr. Pawan Ojha, for the appellant.

By way of filing the present first appeal under Section 96, C.P.C., the appellant – Shispal (one of the defendant in the suit) has challenged the judgment and decree dated 30.1.1987 passed by Additional District Judge, Nohar in Civil Original Suit No.2/83 whereby the learned trial Court has decreed the suit filed by plaintiff-respondent No.1 herein.

According to the facts of the case, a suit was filed by plaintiff-respondent No.1 – Chhelu Ram wherein it was prayed that the sale deed executed by defendant-respondent No.2 – Jessa Ram in favour of defendant-appellant – Shispal on 22.12.1982 may be

cancelled and a decree for permanent injunction may be passed against defendant-respondent No.2 not to interfere with the peaceful possession of the property in question. According to the plaintiff-respondent No.1 – Chhelu Ram, he was adopted by defendant-respondent No.2 – Jessa Ram with the consent of his wife and after adoption, he was living with defendant-respondent No.2 and his family and he was in possession of the property along with defendant-respondent No.2 and the said property was joint HUF property. It was further submitted that defendant-respondent No.2 is very innocent person but respondent No.1 by illegal means and knowingly well that the property in question is belonging to whole of the family members, made efforts to get sale in his favour. In the year 1979, a suit was filed by the plaintiff-respondent No.1 against defendant-respondent No.2 in which final judgment was passed by Munsif Court, Bhadra and it was observed that the said property is belonging to the plaintiff-respondent No.1 and defendant-respondent No.1 and defendant-respondent No.2 – Jessa Ram was restrained from transferring the property in question and adoption was held to be valid. A final decree was passed by Munsif Court, Bhadra on 24.2.1978 and it has been held that Chhelu Ram (plaintiff-respondent No.1) is adopted son of Jessa Ram (defendant-respondent No.2) and Jessa Ram shall not transfer the joint property of family in which the plaintiff and respondent are co-sharer.

There was judgment against respondent No.2-Jessa Ram not to transfer the joint property of Hindu family. According to the plaint, defendant-appellant was aware about the said decree passed by Munsif Court, Bhadra but knowingly well with the conspiracy, he got the sale deed of the house in question in his favour vide registry dated 22.12.1982 and the said registry was executed by defendant-respondent No.2 – Jessa Ram. Therefore, the said sale by way of registry in favour of defendant-appellant was void abinitio. Thus, it was prayed in the plaint by plaintiff-respondent No.1 that the sale-deed may be set aside and defendant-respondent No.2 may be restrained not to make any illegal encroachment in the joint property and not to interfere with the peaceful possession of plaintiff-respondent No.1.

In the suit, notices were issued and written statement was filed before the trial Court on behalf of both the defendants. After filing written statement, issues were framed, which are as follows :

> "1- क्या वादी को प्रतिवादी सं० २ ने दिनांक 14.2.74 को विधिवत खोले लेकर गोदनामा व रोबरू सब रजिस्ट्रार भादरा तस्दीक रजिस्ट्री करवा दिया और वादी प्रतिवादी नं० २ का खोलायत पुत्र है ?
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> 2- क्या विवादित बैयनामा जो प्रतिवादी नं० २ ने प्रतिवादी नं० 1 के पक्ष में दिनांक 22-12-82 को तस्दीक रजिस्ट्री करवाया है, खिलाफ कानून बिलाधिकार बिना बदल एवं बिना जरूरत जायज

हाने के कारण मनसुख किए जाने योग्य है ?

3- क्या प्रतिवादी नं० १ नेकनिय खरीददार बाबदल व बिना सूचना के है अगर ऐसा है तो इसका दावे पर क्या असर है ?

4- क्या प्रतिवादी नं० २ के विरूद्व दिनांक 24.2.78 को पारित डिक्री से प्रतिवादी नं० १ पाबन्द नहीं है ?

5- क्या विवादित सम्पत्ति प्रतिवादी नं० २ के पैदा कर दी है । एवं प्रतिवादी नं० २ ने उक्त मकान सम्पत्ति जायज जरूरत पूरा करने का व पुराना कर्जा अदा करने के लिए विक्रय की है ?

6- क्या कोर्ट फिस ना काफी है ?

7- सहायता ?"

After framing of the issues as above, the plaintiff-respondent No.1 Chhelu Ram - adopted son of defendant-respondent No.2 – Jessa Ram adduced oral and documentary evidence. Learned trial court has recorded the statement of PW-1 Chheulu Ram (plaintiff), PW-2 Jethu Ram and PW-3 Mohan and three documents namely (1) adoption deed, (2) judgment and decree of Munsif Court, Bhadra and (3) sale-deed were exhibited before the trial Court. No statement on behalf of defendant No.1-appellant and defendant No.2-respondent No.2 was recorded nor any documentary evidence was adduced before the trial Court on their behalf though ample opportunities were given by the Court. Thereafter, the matter was finally heard and issue No.1 was decided in favour of plaintiff-

respondent No.1 and against the defendant-appellant and defendant-respondent No.2 and it has been held that plaintiff is adopted son of defendant-respondent No.2 – Jessa Ram. Learned trial Court decided the issues No. 2 to 5 in favour of plaintiff-respondent No.1 and against the defendant-appellant and defendant-respondent No.2 and it has been held that there was a decree against the defendant-respondent No.2 – Jessa Ram not to transfer the property in question. The learned trial Court while observing that neither any evidence was adduced nor any documents were filed on behalf of the defendants and further that there is no dispute with regard to decree passed by learned Munsif Court, Bhadra and it was well within the knowledge of defendant-appellant, therefore, the sale deed executed by defendant-respondent No.2 in favour of defendant-respondent was held to be illegal. There was no right left with defendant-respondent No.2 to sell the property in question but he sold the property illegally and in contravention of the decree passed by learned Munsif Court, Bhadra in which it was categorically held that Chhelu Ram is adopted son of Jessa Ram and property in question belongs to joint hindu property and it is not self acquired property of Jessa Ram. Therefore, the sale was illegally made by Jessa Ram. Learned trial Court has decided the issues No.2 to 5 in favour of plaintiff-respondent No.1. Therefore, there is no question to interfere with the finding given by

learned trial Court with regard to issues No.2 to 5. Issue No.6 with regard to court-fee has been decided in favour of plaintiff-respondent No.1 on cogent reasons and evidence. The learned trial Court has held that the plaintiff and defendant No.2 are members of joint hindu family and both are having right of coparcner and are having half of share in the property, therefore, the court-fee is sufficient. Likewise, issue No.7 has been decided in favour of plaintiff-respondent No.1 and final decree was passed by learned Additional District Judge, Nohar, District Sriganganagar in favour of plaintiff-respondent No.1 and the prayer of the plaintiff-respondent No.1 with regard to cancellation of sale-deed dated 21.12.82 was accepted and the said sale-deed was cancelled and further vide judgment and decree under appeal, the learned trial court restrained the defendant-respondent No.2 to make any illegal encroachment on the property and further it was ordered that the defendant-appellant shall not interfere with the peaceful possession of the plaintiff.

I have perused the entire record of the case.

In this case, admittedly before filing the present suit under the apprehension that respondent No.2 will sale the property, which is belonging to joint Hindu family and plaintiff is adopted son, therefore, a suit was filed by plaintiff-respondent

No.1 before learned Munsif Court, Bhadra and the said suit was decided in favour of plaintiff-respondent No.1 and the defendant-respondent No.2 – Jessa Ram was restrained from selling the property in question and further, it was held that plaintiff is adopted son of respondent No.2 – Jessa Ram and he is having coparcenary right in the property in question. The defendant-appellant does not dispute the said decree, which has been passed by learned Munsif Court, Bhadra and the defendant-appellant was having knowledge of the said decree but with due conspiracy, he got the sale of the property in question in his favour and the said sale was made by the respondent No.2 – Jessa Ram, who was already restrained by learned Munsif Court, Bhadra and decree was passed against him. Secondly, once the trial Court has held that plaintiff-respondent No.1 is adopted son of defendant-respondent No.2 – Jessa Ram and it is not disputed by respondent No.2 and a finding has been given by the learned trial Court that the said judgment and decree passed by learned Munsif Court, Bhadra on 24.2.78 became final, then, there was no question to sale the property in question by the respondent No.2 – Jessa Ram. Therefore, obviously, these two documents were not disputed in this case by defendant-appellant as well as defendant-respondent No.2. Thirdly, the registered sale-deed was obviously made after the judgment of learned Munsif Court, Bhadra on 21.12.1982 and on that date the respondent No.2 was having no right to sell

the property in question. Therefore, in my opinion, the findings reached by the learned trial court with regard to issues No.2 to 5 do not require any interference by this Court. Learned trial Court has rightly set aside the sale-deed dated 21.12.187, which is said to be executed by respondent No.2 in favour of defendant-appellant because prior to this date vide judgment and decree dated 24.2.78, the said property was held to be a property of joint hindu family in which the defendant-appellant was held to be adopted son of defendant-respondent No.2. In these circumstances, the learned trial Court has rightly held that on the date of executing the sale by the defendant-respondent No.2 in favour of defendant-appellant, there was a final decree against defendant-respondent No.2 – Jessa Ram not to transfer the property in question but he has transferred the property in question by way of sale in favour of defendant-appellant. In these circumstances, I see no reason to interfere with the finding given by learned trial Court.

Further, it is admitted case of the plaintiff-respondent No.1 that only written statement was filed on behalf of defendant-appellant and defendant-respondent No.2. They did not appear before the Court as witness nor any documentary evidence was produced before the Court on behalf of them to prove their case. Therefore, I find no force in this appeal.

In these circumstances, the judgment and decree dated 30.1.87 passed by Additional District Judge, Nohar does not require any interference by this Court. Accordingly, this appeal is dismissed.

(GOPAL KRISHAN VYAS), J.

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